IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.136 OF 2006
IN
NOTICE OF MOTION NO.3893 OF 2006
IN
SUIT NO.3291 OF 2005

Chandrakant Govind Bagwe ..Appellant.
(Orig.Plff.)

Vs.

Vandana Krishnarao Raut
& Ors. ..Respondents.
(Orig.Defts.)

Mr.D.H.Mehta with Ms.Anjali Helekar with Ms.Limaye for the Appellant.

Mr.P.K.Samdhani with Mr.Sumil Purohit with Mr.Ketan Chothani with Mr.Lalit Kumar Jain for the Respondents.

CORAM: DR.S.RADHAKRISHNAN AND S.J.VAZIFDAR, JJ.

DATED: 13TH MARCH, 2006

P.C. :

Heard learned counsel for the Appellant and the learned counsel for the Respondents.

2. By this Appeal, the Appellant is challenging the ad-interim order dated 15.2.2006 passed by the learned Single Judge.

3. The main grievance of the Appellant is with regard to the initiation of the contempt proceedings

under section 12(2) of the Contempt of Courts Act, 1971 read with Article 215 of the Constitution of India as indicated in paragraph 14 of the impugned order. The learned Single Judge has proceeded on the basis that the Petitioner has not disclosed at all the fact of termination of the agreement dated 5.5.1999 by a letter dated 25.1.2002.

4. The learned Single Judge has proceeded on the basis that there is a wilful and deliberate suppression by not disclosing the above termination by letter dated 25.1.2002.

5. However, we find from the plaint, specially, in prayer (a) of the plaint, wherein, the Appellant has categorically sought a declaration that the alleged termination is illegal and bad in law. Over and above, even the correspondence which is annexed to the plaint, specially, the letter dated 28.12.2004 being Exhibit "H" and the reply dated 8.2.2005 being Exhibit "I" wherein, in paragraph 2 the Respondent’s advocate have disclosed that the aforesaid agreement is terminated by a notice dated 25.1.2002. It is true that these facts have not been clearly set out in detail in the plaint. So, this is not a case wherein one can construe that there has been a

deliberate and wilful suppression of material facts, necessitating action under Contempt of Courts Act, 1971 read with Article 215 of the Constitution of India.

6. As far as the other issues are concerned, the same are prima-facie view of the learned Single Judge that the suit itself is clearly barred by limitation and the reasons for the same are clearly indicated in paragraph 12. We have also perused paragraph 20 of the plaint. The contention of Mr.Mehta that the Respondents had waived the said termination, cannot be made out from the said pleading in paragraph 20 and, hence we do not find any illegality or error in the judgment of the learned Single Judge that the suit itself is clearly barred by limitation, as per the existing pleadings.

7. The learned Single Judge has rightly observed in paragraph 12 that there is not even an averment in the plaint by the Plaintiff that by virtue of the prosecuting the suit, the termination of the agreement dated 25.1.2002 should be treated as waived. Hence, the learned Single Judge is right in holding, prima-facie, that the suit is barred by limitation.

8. Under the aforesaid facts and circumstances, the only to the limited extent that the action sought to be initiated against the Appellants under section 12(2) of the Contempt of Courts Act, 1971 read with Article 215 of the Constitution of India as indicated in paragraph 14 of the impugned order, stands set aside.

9. With regard to the other reasonings, we are not inclined to interfere with the same. However, the Appellant is at liberty to adopt appropriate proceedings to amend the plaint with regard to the said issue of limitation.

10. Appeal stands disposed of accordingly with no order as to costs.

(DR.S.RADHAKRISHNAN, J.)

(S.J. VAZIFDAR, J.)